



Senate

General Assembly

File No. 781

January Session, 2015

Substitute Senate Bill No. 1130

Senate, May 7, 2015

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT IMPLEMENTING A TAX ON CONTROLLED SUBSTANCES
AND FUNDING REGIONAL OPIOID ABUSE PREVENTION AND
TREATMENT PROGRAMS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2016*) (a) For the purposes of
2 this section and section 2 of this act:

3 (1) "Commissioner" means the Commissioner of Revenue Services;

4 (2) "Controlled substance" means a controlled substance, as defined
5 in section 21a-240 of the general statutes, in schedule I or II, except that
6 "controlled substance" does not include marijuana prescribed for
7 palliative use pursuant to chapter 420f of the general statutes;

8 (3) "Manufacturer" means a manufacturer of a controlled substance
9 to be sold in this state, and includes, but is not limited to, a
10 manufacturer of a controlled substance that is licensed in accordance
11 with section 21a-246 of the general statutes;

12 (4) "Pharmacist" means a person authorized by law to practice
13 pharmacy pursuant to section 20-590, 20-591, 20-592 or 20-593 of the
14 general statutes;

15 (5) "Pharmacy" means an establishment licensed pursuant to section
16 20-594 of the general statutes; and

17 (6) "Wholesaler" means a wholesaler, as defined in section 21a-240
18 of the general statutes, of a controlled substance to be sold in this state,
19 and includes, but is not limited to, a wholesaler of a controlled
20 substance that is licensed in accordance with section 21a-246 of the
21 general statutes.

22 (b) There shall be paid to the Commissioner of Revenue Services by
23 each manufacturer or wholesaler of a controlled substance a tax at a
24 rate of six and thirty-five-hundredths per cent on its gross receipts for
25 any controlled substance lawfully sold on or after January 1, 2016, to
26 any of the following-named persons located in this state: (1) A
27 pharmacist or pharmacy; (2) a physician, dentist or veterinarian; (3) a
28 person in charge of a hospital, incorporated college or scientific
29 institution; (4) a person in charge of a laboratory; or (5) a registrant, as
30 defined in subdivision (47) of section 21a-240 of the general statutes,
31 who is permitted to purchase and possess such controlled substance
32 under federal and state laws and regulations. Such manufacturer or
33 wholesaler may itemize and collect the amount of such tax on any sale
34 to a person described in subdivisions (1) to (5), inclusive, of this
35 subsection. Any person described in subdivisions (1) to (5), inclusive,
36 of this subsection who dispenses such controlled substance within this
37 state to a beneficiary of the Medicare Part D program as a covered
38 benefit under the Medicare Part D program, or to a beneficiary of any
39 other program under which such controlled substance is a covered
40 benefit that is exempt from taxation, may claim a refund of the amount
41 of such tax with respect to such beneficiary in accordance with section
42 2 of this act.

43 (c) Each manufacturer or wholesaler of controlled substances that
44 lawfully sells such controlled substances to any of the persons

45 described in subsection (b) of this section shall register with the
46 Commissioner of Revenue Services not later than January 1, 2016, on
47 forms prescribed by the commissioner and each registered
48 manufacturer or wholesaler shall renew its registration with the
49 commissioner annually, in such manner as the commissioner may
50 prescribe. No manufacturer or wholesaler may engage in or transact
51 business as a manufacturer or wholesaler of controlled substances to
52 be sold in this state unless such manufacturer or wholesaler is
53 registered with the commissioner in accordance with the provisions of
54 this section. Any manufacturer or wholesaler that fails to register or
55 renew such registration in accordance with the provisions of this
56 subsection shall pay a penalty of one thousand dollars for each such
57 failure, which penalty shall not be subject to waiver.

58 (d) Each manufacturer and wholesaler shall submit a return
59 quarterly to the Commissioner of Revenue Services, applicable with
60 respect to the calendar quarter beginning January 1, 2016, and each
61 calendar quarter thereafter, on or before the last day of the month
62 immediately following the end of each such calendar quarter, on a
63 form prescribed by the commissioner, together with payment of the
64 quarterly tax determined and payable in accordance with the
65 provisions of this section. Whenever such tax is not paid when due, a
66 penalty of ten per cent of the amount due or fifty dollars, whichever is
67 greater, shall be imposed, and such tax shall bear interest at the rate of
68 one per cent per month or fraction thereof until the same is paid. The
69 Commissioner of Revenue Services shall cause copies of a form
70 prescribed for submitting returns as required under this section to be
71 distributed to persons subject to the tax. Failure to receive such form
72 shall not be construed to relieve any manufacturer or wholesaler
73 subject to the tax under this section from the obligations of submitting
74 a return, together with payment of such tax within the time required.
75 The provisions of sections 12-548 to 12-554, inclusive, of the general
76 statutes and sections 12-555a and 12-555b of the general statutes shall
77 apply to the provisions of this section in the same manner and with the
78 same force and effect as if the language of said sections 12-548 to 12-
79 554, inclusive, and sections 12-555a and 12-555b had been incorporated

80 in full into this section and had expressly referred to the tax imposed
81 under this section, except to the extent that any such provision is
82 inconsistent with a provision of this section. Any moneys received by
83 the commissioner pursuant to this section shall be deposited into the
84 opioid abuse prevention and treatment account established in section 3
85 of this act.

86 (e) The Commissioner of Revenue Services shall notify the
87 Commissioner of Consumer Protection whenever a manufacturer or
88 wholesaler licensed pursuant to section 21a-246 of the general statutes
89 has continuously failed to comply with the requirements of this section
90 for a period of at least six months. The Commissioner of Consumer
91 Protection may suspend, revoke or refuse to renew the license of a
92 manufacturer or wholesaler who has continuously failed to comply
93 with the requirements of this section for a period of six months or
94 longer. The Commissioner of Revenue Services shall notify the
95 licensing authority of any other state where a manufacturer or
96 wholesaler is licensed whenever such manufacturer or wholesaler has
97 continuously failed to comply with the requirements of this section for
98 a period of at least six months.

99 (f) Nothing in this section shall exempt any person from the tax
100 imposed pursuant to chapter 228d of the general statutes with respect
101 to marijuana or other controlled substance, as those terms are defined
102 in section 12-650 of the general statutes.

103 Sec. 2. (NEW) (*Effective January 1, 2016*) (a) Any person claiming a
104 refund pursuant to subsection (b) of section 1 of this act shall file such
105 claim in accordance with this section. Each claim for refund shall be on
106 a form prescribed by the Commissioner of Revenue Services and shall
107 be accompanied by invoices or sales receipts or other statements of
108 fact, under penalty of false statement, showing, to the satisfaction of
109 the commissioner, the amount paid with respect to such refund, and
110 any other information that is deemed necessary by the commissioner
111 for the determination of such claim. Any claim for a refund with
112 respect to a controlled substance sold by such person during any

113 calendar year shall be filed with the commissioner on or before May
114 thirty-first of the succeeding year.

115 (b) (1) The commissioner shall, not later than ninety days after
116 receipt of any claim under this section, transmit all claims approved by
117 the commissioner to the Comptroller, who shall draw an order upon
118 the State Treasurer for payment. If the commissioner determines that
119 any such claim is not valid, either in whole or in part, the
120 commissioner shall mail notice of the proposed disallowance to the
121 claimant and such notice shall set forth briefly the commissioner's
122 findings of fact and the basis of disallowance in each case decided in
123 whole or in part adversely to the claimant. Sixty days after the date on
124 which it is mailed, a notice of proposed disallowance shall constitute a
125 final disallowance except only for such amounts as to which the
126 claimant has filed, as provided in subdivision (2) of this subsection, a
127 written protest with the commissioner.

128 (2) On or before the sixtieth day after the mailing of the proposed
129 disallowance, the claimant may file with the commissioner a written
130 protest against the proposed disallowance in which the claimant sets
131 forth the grounds on which the protest is based. If a protest is filed, the
132 commissioner shall reconsider the proposed disallowance and, if the
133 claimant has so requested, may grant or deny the claimant or the
134 claimant's authorized representatives an oral hearing.

135 (3) The commissioner shall mail notice of the commissioner's
136 determination to the claimant, which notice shall set forth briefly the
137 commissioner's findings of fact and the basis of decision in each case
138 decided in whole or in part adversely to the claimant.

139 (4) The action of the commissioner on the claimant's protest shall be
140 final upon the expiration of one month from the date on which the
141 commissioner mails notice of the commissioner's action to the claimant
142 unless within such period the claimant seeks judicial review of the
143 commissioner's determination in the manner provided for distributors
144 pursuant to section 12-463 of the general statutes.

145 Sec. 3. (NEW) (*Effective January 1, 2016*) There is established an
146 opioid abuse prevention and treatment account which shall be a
147 separate, nonlapsing account within the General Fund. The account
148 shall contain the amount of any taxes collected pursuant to section 1 of
149 this act and any other moneys required by law to be deposited in the
150 account. Amounts in the account shall be expended only for the
151 purpose of providing funds to the Department of Mental Health and
152 Addiction Services to provide grants-in-aid for regional opioid abuse
153 prevention and treatment programs pursuant to section 5 of this act.

154 Sec. 4. Subsection (d) of section 17a-450 of the general statutes is
155 repealed and the following is substituted in lieu thereof (*Effective*
156 *January 1, 2016*):

157 (d) The Department of Mental Health and Addiction Services is
158 designated as the lead state agency for substance abuse prevention and
159 treatment in this state, and as such is designated as the state
160 methadone authority. As the designated state methadone authority,
161 the department is authorized by the federal Center for Substance
162 Abuse Treatment of the Substance Abuse and Mental Health Services
163 Administration within the United States Department of Health and
164 Human Services to exercise responsibility and authority for the
165 treatment of opiate addiction with an opioid medication, and
166 specifically for: (1) Approval of exceptions to federal opioid treatment
167 protocols in accordance with the Center for Substance Abuse
168 Treatment, (2) monitoring all opioid treatment programs in the state,
169 (3) providing grants-in-aid to regional opioid abuse prevention and
170 treatment programs that follow state and federal treatment protocols
171 in accordance with section 5 of this act, and [(3)] (4) approval of Center
172 for Substance Abuse Treatment certification of all opioid treatment
173 programs in the state. The Commissioner of Mental Health and
174 Addiction Services may adopt regulations in accordance with chapter
175 54 to carry out the provisions of this subsection.

176 Sec. 5. (NEW) (*Effective January 1, 2016*) (a) The Commissioner of
177 Mental Health and Addiction Services shall provide grants-in-aid,

178 within available resources, to one or more regional opioid abuse
 179 prevention and treatment programs in each mental health region
 180 established pursuant to section 17a-478 of the general statutes. The
 181 commissioner shall provide such grants-in-aid to programs that follow
 182 state and federal treatment protocols and shall allocate such grants-in-
 183 aid on the basis of regional need and demand for services. Each
 184 program that receives a grant-in-aid pursuant to this section shall
 185 provide services in a manner that reduces the stigma associated with
 186 opioid abuse prevention and treatment and minimizes client contact
 187 with the criminal justice system.

188 (b) Not later than January 31, 2017, the commissioner shall submit a
 189 report to the joint standing committees of the General Assembly
 190 having cognizance of matters relating to public health and finance,
 191 revenue and bonding concerning the grants-in-aid awarded during the
 192 calendar year commencing January 1, 2016. The report shall indicate
 193 the amount of the grants-in-aid awarded, the recipients of the grants-
 194 in-aid, any amounts remaining in the opioid abuse prevention and
 195 treatment account established pursuant to section 3 of this act that
 196 were not allocated as of December 31, 2016, and the commissioner's
 197 recommendations, if any, for amendments to the general statutes
 198 regarding the grants-in-aid program or regional opioid abuse
 199 prevention and treatment programs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2016</i>	New section
Sec. 2	<i>January 1, 2016</i>	New section
Sec. 3	<i>January 1, 2016</i>	New section
Sec. 4	<i>January 1, 2016</i>	17a-450(d)
Sec. 5	<i>January 1, 2016</i>	New section

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Resources of the General Fund	GF - Revenue Gain	3.3 million	6.6 million
Department of Revenue Services	GF - Cost	156,750	119,000
Consumer Protection, Dept.	GF - Cost	66,799	128,598
State Comptroller - Fringe Benefits ¹	GF - Cost	59,154	95,310
Mental Health & Addiction Serv., Dept.	GF - Potential Cost	42,325	84,649
State Comptroller - Fringe Benefits ¹	GF - Potential Cost	16,359	32,717

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a revenue gain of \$3.3 million in FY 16 and an annualized gain of \$6.6 million thereafter by applying the 6.35% tax on certain controlled substances.

The bill also results in (1) a total cost of \$282,703 in FY 16 and \$342,908 in FY 17 related to the administration of the tax by the Departments of Revenue Services and Consumer Protection and (2) a potential cost of \$58,684 in FY 16 and \$117,366 in FY 17 for the administration of the grant program by the Department of Mental Health and Addiction Services.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

Sections 1 and 2 of the bill results in a revenue gain of \$3.3 million in FY 16 and an annualized gain of \$6.6 million thereafter by extending the 6.35% sales and use tax on certain controlled substances, except (1) palliative marijuana and (2) sales to beneficiaries of the Medicare Part D program. Specifically, the revenue gain is to municipalities that receive grants for regional substance abuse prevention and education programs under the bill.

Sections 1 and 2 also result in a cost to the Department of Revenue Services (DRS) of \$191,245 in FY 16 and \$164,994 in FY 17 and annually thereafter. This consists of a one-time cost of \$67,500 in FY 16 to establish the new tax, including updates to the online Taxpayer Service Center and changes to DRS' internal Integrated Tax Administration System for data capture and scanning, and postage costs. There are also on-going salary and fringe costs, which annualize to \$119,000 (salary) and \$45,994 (fringe) in FY 17, associated with one Revenue Examiner 1 and one Tax Corrections Examiner for audit and compliance, and administration of the refund provisions of the bill.

Section 1(e) of the bill results in a cost to the Department of Consumer Protection (DCP) of \$91,457 in FY 16 and \$177,914 in FY 17. The DCP would require a Paralegal and a Staff Attorney to schedule and conduct noncompliance administrative hearings. There are approximately 2,000 registered wholesalers and manufacturers of controlled substances registered with the DCP. Half of the registrants are located out-of-state. Assuming ten percent of the registrants are noncompliant during the year, this would result in approximately 200 administrative hearings.

The cost in FY 16 (half year funding) includes \$63,799 for personnel, \$3,000 in computer equipment and related other expenses and \$24,658 in fringe benefits. The cost in FY 17 includes \$127,598 for personnel, \$1,000 in related other expenses and \$49,316 in fringe benefits.

Section 3 establishes an "opioid abuse prevention and treatment" account as a separate non-lapsing account in the General Fund which will finance the new grant program. The revenue generated by the tax

imposed under the bill is directed into this account to finance the new grant program.

Sections 4 and 5 may result in a cost to the Department of Mental Health and Addiction Services (DMHAS) for an Associate Accounts Examiner at an annual salary of \$84,649 (with associated fringe of \$32,717) to administer a new grant program to support regional opioid abuse prevention and treatment programs in each mental health region of the state.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation except those identified as one-time in nature.

OLR Bill Analysis**sSB 1130*****AN ACT IMPLEMENTING A TAX ON CONTROLLED SUBSTANCES AND FUNDING REGIONAL OPIOID ABUSE PREVENTION AND TREATMENT PROGRAMS*****SUMMARY:**

This bill creates a mechanism to fund opioid abuse and prevention programs in the state's five mental health regions. The mechanism (1) imposes a 6.35% tax on the gross receipts of the legal sale of schedule I and II controlled substances and (2) dedicates the revenue the tax generates toward funding these programs. This tax does not exempt anyone from paying the tax imposed on controlled substances and marijuana that are illegally acquired, transported, or imported into Connecticut (CGS § 12-651).

Controlled substances are grouped in schedules I through V according to their decreasing tendency to promote abuse or dependency. Schedule I and II substances, which include opiates and most painkillers, are the most strictly controlled because of their high potential for abuse.

Under the bill, Department of Consumer Protection (DCP)-licensed manufacturers and wholesalers of schedule I and II controlled substances must:

1. register with the Department of Revenue Services (DRS) commissioner;
2. collect the tax from pharmacists, physicians, and others authorized to distribute, administer, or dispense the covered substances (practitioners); and
3. remit the revenue to DRS as the bill requires.

Manufacturers and wholesalers that fail to comply with these requirements face penalties and interest charges. The bill exempts from the tax marijuana legally prescribed for palliative uses. Such marijuana is classified as a schedule II controlled substance.

Practitioners may claim a refund for taxes they paid on the controlled substances they acquired from a manufacturer or wholesaler and subsequently dispensed to a beneficiary of Medicare Part D or any other programs under which such substances are exempt from taxation.

The revenue the new tax generates must go into a separate, nonlapsing fund the bill establishes to fund regional opioid abuse and prevention programs. The Department of Mental Health and Addiction Services (DMHAS) must administer the funds, awarding grants to programs that meet the bill's criteria. The DMHAS commissioner must report to the legislature by January 1, 2017 on the grants she awarded in 2016.

EFFECTIVE DATE: January 1, 2016

TAX ON SCHEDULE I AND II CONTROLLED SUBSTANCES

The bill imposes a 6.35% tax on the legal sale of schedule I and II controlled substances. The tax must be collected and remitted by DCP-licensed manufacturers and wholesalers from the following practitioners: pharmacists and pharmacies; physicians, dentists, and veterinarians; people in charge of hospitals, incorporated colleges, scientific institutions, and laboratories; and others allowed to purchase and possess controlled substances (i.e., registrants).

Registration

Under the bill, DCP-licensed manufacturers and wholesalers of controlled substances must annually register with the DRS commissioner beginning January 1, 2016, which is also the bill's effective date. Those that fail to do so cannot manufacture or sell the substances at wholesale. If they fail to register or renew their registration, they face a \$1,000 fine, which the commissioner cannot

waive, for each such failure. As explained below, manufacturers and wholesalers may lose their licenses if they fail to register or renew their registration for at least six months.

Collecting and Remitting the Tax

Manufacturers and wholesalers must collect the tax the bill imposes and remit it to DRS on a quarterly basis, beginning January 1, 2016. They may itemize and collect the tax from each practitioner, and they must remit the taxes collected during each calendar quarter by the last day of the month following the quarter (e.g., taxes collected during January through March must be remitted by April 30). Manufacturers and wholesalers that fail to do so must pay 10% of the tax they collected or \$50, whichever is more, plus 1% interest per month or partial month until they remit the tax.

The DRS commissioner must distribute forms manufacturers and wholesalers must use to remit the tax, but his failure to do so does not relieve them of the duty to remit the tax. The commissioner may enforce the collection and remittance of the tax using the same powers and tools the law grants him to enforce the collection and remittance of the admissions tax (CGS §§ 12-548 – 12-555 b).

The DRS commissioner must also notify the DCP commissioner when a manufacturer or wholesaler continuously fails to comply with the bill's requirements for at least six months. Once notified, the DCP commissioner may suspend, revoke, or refuse to renew their license. The DRS commissioner may also notify the licensing authority in any other state where these businesses are licensed to make or sell at wholesale schedule I and II controlled substances.

Applying for Refund

The bill allows practitioners to claim a refund for the taxes they paid on controlled substances they subsequently prescribed to a beneficiary of a health plan under which such substances are exempt from taxation.

To claim such a refund, a practitioner must file the claim on the

form the DRS commissioner prescribes, along with invoices, sales receipts, or statements attesting to the amount of taxes it paid on refundable sales. The practitioner must submit these documents under the penalty of false statement and provide the commissioner any information he needs to verify the claim. The practitioner must file the claim by May 31 of the year following the one in which the business paid the taxes.

The commissioner must act on each claim within 90 days after receiving it, notifying the comptroller of those he approves. The comptroller, in turn, must direct the state treasurer to process the payment.

The commissioner must also notify the practitioner if he disapproves all or part of the claim. He must do so by mail, stating his reasons for denial. The practitioner has 60 days to respond in writing, after which the notice is considered final. If the practitioner protests the commissioner's decision, the commissioner must reconsider it and, if the practitioner requests an oral hearing, decide whether to hold one.

After reconsidering the practitioner's claim, the commissioner must provide notice of his decision. He must do so by mail, again explaining the reasons for his decision. The practitioner has 30 days to appeal his decision to Superior Court, following the same steps fuel distributors must follow for appealing his decisions regarding the motor fuel tax (CGS § 12-463). Otherwise, the commissioner's decision is final one month after the notice is received.

OPIOID ABUSE AND PREVENTION TREATMENT GRANTS

The bill establishes a separate, nonlapsing account within the General Fund for depositing the revenue the tax generates, plus interest earnings and other money that must, by law, be deposited in the account. The account's funds can be used by DMHAS only to fund regional opioid abuse and treatment programs that follow federal and state treatment protocols.

The DMHAS commissioner can make one or more grants to these

programs in each of the state's five mental health regions based on each region's needs and demands for service. Programs awarded grants must use the funds to reduce the stigma associated with such programs and minimize each client's contact with the court system.

The commissioner must report to the Public Health and Finance, Revenue and Bonding committees by January 31, 2017 on the grants she awarded in calendar year 2016. The report must (1) identify the grant amounts and recipients, (2) indicate the account's balance as of December 31, 2016, and (3) recommend changes to the grants and the programs they fund.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 25 Nay 21 (04/24/2015)